Lembaga Penyelidikan dan Kemajuan Minyak Kelapa Sawit v Premium Vegetable Oils Sdn Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO D5–22–1766 OF 1999
KANG HWEE GEE J
15 SEPTEMBER 2000

Statutory Interpretation *— Aids to construction — Intention of Parliament — Creation of palm oil research cess — Whether words 'and' and 'and/or' in s 2 of Oil (Research Cess) Act 1979 Act convey disjunctive meaning — Whether cess can be levied for oil extracted from kernel only — Palm Oil (Research Cess) Act 1979 ss 2 & 14*

Trade and Industry *— Agriculture — Palm Oil research cess — Production of crude palm kernel oil — Intention of legislature in creating cess — Whether cess can be levied for oil extracted from kernel only — Palm Oil (Research Cess) Act 1979 ss 2 & 14*

The defendant was a manufacturer of crude palm oil ('CPO') and crude palm kernel oil ('CPKO'). The defendant has been paying research cess to the plaintiff for CPO manufactured by the defendant since July 1985. However, the defendant only paid cess for the production of CPKO from July 1985 to June 1989. The plaintiff's application for summary judgment for cess outstanding in respect of CPKO produced by the defendant was allowed by the registrar. The defendant appealed against the decision. The defendant argued that there were issues in the plaintiff's claim that ought to be tried, in that the plaintiff was not empowered by law to levy cess on the defendant. The defendant explained that s 14 of the Palm Oil (Research Cess) Act 1979 ('the Act') empowers the minister to make orders to, inter alia, levy cess on 'palm oil' which is defined by s 2 of the Act as oil extracted from 'oil palm fruits and seeds'. The use of the word 'and' in s 14 of the Act is indicative of Parliament's intention that cess be levied by the minister on oil extracted from oil palm fruits and seeds ('CPO') and not on oil extracted from the seed only. As such cess cannot be levied for oil extracted from only the kernel of the seed ('CPKO') as the kernel is only part of the seed.

Held, dismissing the appeal:

(1) The definition of palm oil in the definition section is neither exclusive nor exhaustive. It has to be read in the context with the Act as a whole. The intention of the legislative in creating a cess is to support, inter alia, research work, increasing public awareness of palm oil and oil palm in the interest of the public and the nation as a whole. To read that definition section in a restrictive manner would do violence to the intent and purpose of the legislature. It would result in an illogical if not undesirable conclusion in the board being allowed to promote oil from palm only but not from its kernel or seed (which also comes from the palm) (see p 238F–G).

(2) When the Palm Oil (Research Cess) Act 1979 was passed, Parliament intended that all oil palm millers were required to pay cess on any kind of crude oil, whether produced from the fruits and/or seeds. The words 'and' and 'and/or' in s 2 of the Act are loosely and interchangeably used to convey a disjunctive meaning, implying a variety or element of an alternative product, attracting cess to be payable on CPKO as being a class of crude palm oil (see pp 239H–240A).

[**Bahasa Malaysia summary**

Defendan adalah pengilang minyak sawit mentah ('MSM') dan minyak isirung sawit mentah ('MISM'). Defendan selama ini membayar ses (cess) penyelidikan kepada plaintif bagi MSM yang dikilangkan oleh defendan sejak Julai 1985. Walau bagaimanapun, defendan hanya membayar ses untuk penghasilan MISM dari Julai 1985 hingga Jun 1989. Permohonan plaintif untuk penghakiman ringkas bagi ses terhutang bagi MISM yang dikilangkan oleh defendan dibenarkan oleh pendaftar. Defendan merayu membantah keputusan tersebut. Defendan berhujah bahawa terdapat isu-isu dalam tuntutan plaintif yang patut dibicarakan, oleh kerana plaintif tidak mempunyai kuasa di bawah undang-undang untuk mengenakan ses ke atas defendan. Defendan menerangkan bahawa s 14 Akta Minyak Sawit (Ses Penyelidikan) 1979 ('Akta tersebut') memberikan kuasa kepada menteri untuk membuat perintah bagi mengenakan ses pada 'minyak sawit' yang ditafsirkan dalam s 2 Akta tersebut sebagai minyak yang diperolehi dari 'buah dan biji kelapa sawit'. Kegunaan perkataan 'dan' dalam s 14 Akta tersebut menunjukkan bahawa niat Parlimen adalah agar ses dikenakan oleh menteri atas minyak yang diperolehi daripada buah dan biji kelapa sawit ('MSM') dan bukan atas minyak yang diperolehi daripada bijinya sahaja. Oleh itu, ses tidak boleh dikenakan bagi minyak yang diperolehi hanya daripada isirung biji sawit ('MISM') kerana isirung merupakan cuma sebahagian daripada biji sawit.

Diputuskan, menolak rayuan tersebut:

(1) Maksud minyak sawit dalam seksyen takrifan tidak eksklusif atau bolehhabis. Ia perlu dibaca dalam konteks keseluruhan Akta tersebut. Niat perundangan dalam mewujudkan satu ses adalah untuk menyokong kerja penyelidikan, meningkatkan kesedaran orang awam mengenai minyak sawit dan kelapa sawit demi kepentingan awam dan negara. Dengan membaca seksyen takrifan dalam cara yang terhad, ia akan melanggar niat dan tujuan perundangan. Ia akan mengakibatkan satu kesimpulan yang tidak lojik dan tidak diingini dengan mengizinkan badan tersebut mempromosikan minyak daripada kelapa sawit sahaja tetapi bukan daripada isirung atau bijinya (yang juga datang daripada kelapa sawit) (lihat ms 238F–G).

(2) Apabila Akta Minyak Sawit (Ses Penyelidikan) 1979 diluluskan, Parlimen mempunyai niat agar semua pengilang minyak sawit membayar ses atas apa jua jenis minyak mentah, baik diperolehi daripada buahnya mahupun daripada bijinya. Perkataan-perkataan 'dan' dan 'dan/atau' dalam s 2 Akta tersebut digunakan secara longgar dan salingbolehtukar untuk memberikan satu maksud bersifat disjunktif, dengan maksud tersirat kepelbagaian atau hasil alternatif, menyebabkan ses boleh dibayar atas MISM sebagai satu kelas minyak sawit mentah (lihat ms 239H–240A).]

Notes

For a case on intention of Parliament in construing a legislation, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) para 1392.

Cases referred to

Premium Vegetable Oils Sdn Bhd v Palm Oil Research & Development Board Malaysia & Anor [1997] 3 AMR 2097 (refd)

Legislation referred to

Palm Oil (Research Cess) Act 1979
Palm Oil (Research Cess) Amendment Order 1982
Palm Oil (Research Cess) Amendment Order 1984
Palm Oil (Research Cess) Order 1979
Rules of the High Court 1980 O 14

Anand Raj (*Shearn Delamore & Co*) for the plaintiff.
David Morais (*M David Morais*) for the defendant.

Kang Hwee Gee J. : Appeal from the registrar allowing the plaintiff's application for summary judgement under O 14.

The plaintiffs claim is described in the following relevant paragraphs of the plaintiff's counsel's submission:

1.1 The defendant is a manufacturer of crude palm oil ('CPO') and crude palm kernel oil ('CPKO').

1.2 The defendant has been paying research cess to the plaintiff for CPO manufactured by the defendant from July 1985 to date. However, the defendant only paid cess for the production of CPKO from July 1985 to June l989.

1.3 By a writ summons dated 18 November 1993, the defendant commenced an action against the plaintiff and the director general of Palm Oil Research Institute of Malaysia vide Kuala Lumpur High Court Civil Suit No D-22-1286-93 ('the previous suit') for, inter alia, a declaration that the plaintiff was not empowered to levy cess on the defendant for the production and/or extradition of CPKO.

1.4 In the previous suit, the plaintiff counter claimed for the cess payable by the defendant for the periods of 1986 to 1989.

1.5 On 1 April 1997, this honourable court had dismissed the defendant's claim for the declaration and allowed the plaintiff's claim for the cess allegedly payable on CPKO (see the reported decision in [1997] 3 AMR 2897).

1.6 An appeal is pending against that decision in the Court of Appeal vide Civil Appeal No W-02-150-1997.

1.7 The present action is for cess allegedly outstanding from the defendant for the period of April 1997 to March 1997 and for statements showing the amount of CPKO by the defendant produced by the defendant for the same period.

The defendant opposed the application on the grounds as described:

9 The defendant's submission is two fold

9.1 That there are issues in the plaintiff's claim that ought to be tried, in that the plaintiff is not empowered by law to levy cess on the defendant nor demand statements on the production of CPKO; and

9.2 That the question of whether the plaintiff is empowered to levy cess for the production of CKO is unfit for summary disposal as this honourable court requires expert evidence on the differences between CPO and CPKO.

10 The defendant's contention is that the minister's act of imposing cess for the production of CPKO by the Palm Oil (Research Cess) Act 1979 ('the Act') is illegal and ultra vires his powers for the following reasons:

10.1 Section 14 of the Act empowers the minister to make orders to, inter alia, levy cess on 'palm oil'. Palm oil is defined by s 2 of the Act as oil extracted from 'oil palm fruits and seeds';

See: 1. Palm Oil (Research Cess) Act 1979 ('the Act') [BOA-1].

10.2 Section 3 of the Palm Oil (Research Cess) Order 1979 ('the Order') seeks to make palm oil millers liable to pay cess to the plaintiff. A 'palm oil miller' is defined as a person who is in the business of manufacturing 'oil from the palm fruit and/or seed';

See: 2. Palm Oil (Research Cess) Order 1979 [BOA-2].

10.3 The use of the word 'and' in s 14 of the Act is indicative of Parliament's intention that cess be levied by the minister on oil extracted from oil palm fruits and seeds ('CPO') and not on oil extracted from the seed only. Certainly cess cannot be levied for oil extracted from only the kernel of the seed ('CPKO') as the kernel is only part of the seed;

10.4 Cess is a form of tax. A taxing statute must be strictly construed as tax is only payable when the words of a statute clearly and unambiguously impose it.

See: 3 *Wharton's Law Lexicon* [BOA-3].
4 *Principles of Statutory Interpretation* — Guru Prasanna Singh (5th Ed (Reprint), 1993) — [BOA-4].
5 *Tennant v Smith* [1892] AC 150 at p 154 — [BOA-5].
6 *Greenwood v FL Smidth & Co* [1922] 1 AC 417 — [BOA-6].

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7 *Comptroller General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35 — [BOA-7].

8 *National Land Finance Co-operative v Director of Inland Revenue* [1994] 1 MLJ 99 — [BOA-8].

10.5 Hence the word 'and' in s 14 of the Act cannot be construed to mean 'and/or'. Cess can only be imposed for oil made from the palm fruit and seed and not from the seed alone;

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See: 9 *PP v Sharikat Perusahaan Makanan Haiwan Bekerjasama* [1969] 2 MLJ 250 — [BOA-9].

10 *Inayat Ali Khan v State of UP* [1971] 2 SCC 311 at p 313B-[BOA-10].

C

10.6 Additionally, the use of a related statute is permissable as an aid to construction. Section 16 of the Palm Oil Registration and Licensing Authority (Incorporation) Act 1976 ('PORLA 1976') (as amended by the Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1982 ('PORLA 1982')) [BOA-11.1] defines palm oil as 'oil, whether in crude or processed form extracted from oil palm fruits or palm seeds'.

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10.7 Additionally, PORLA 1976 (as amended by Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1989 ('PORLA 1989') defines palm oil to mean 'oil … extracted from the pericarp of the oil palm fruit; and includes oil … originating or extracted from the kernel of the oil palm fruit'.

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See: 11 See Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1982 — [BOA –11].

12 Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1989 — [BOA-12].

10.8 Parliament when enacting PORLA 1976 (as amended by PORLA 1982 and PORLA 1989) and the Act, intended PORLA 1976 to empower the imposition of cess for CPO and CPKO and for the Act to only empower the imposition of cess for CPO. If the minister is to be empowered to impose cess on the defendant, then the Act must be amended to reflect Parliament's intention.

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See: 13 *Arlich Development Pte Ltd v Rafiq Jumabhoi* [1995] 2 SLR 401 at p 419 [BOA-13].

10.9 As such, the Order is ultra vires to the extent that it purports to impose cess on CPKO as it is inconsistent with the Act.

G

See: 14 Section 23 Interpretation Acts 1948 and 1967 – [BOA-14].

15 *Utah Construction & Engineering Pty Ltd & Anor v Pataky* [1965] 3 All ER 650 [BOA-15].

H

16 *Ghazali v PP* [1964] MLJ 156 at p 158 [BOA-11].

11 It is submitted that the interpretation of the Act and the Order in the light of what has been said above requires a finding on the differences between CPO and CPKO. As such, expert evidence should be taken, as was done in the previous suit, in order to make a finding on whether the Act empowers the minister to levy cess on CPKO.

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See: 17*SM Appaduray & Anor v R Ananda & Anor* [1982] 1 MLJ 292.

12 The affidavits filed merely state whether or not cess is payable in respect of CPKO but do not in any way explain the nature of CPKO and its difference from CPO.

Finding

On the procedural point: No merit in this submission. The Order 14 procedure is most suitable as the issue in this case is only the sole question of whether cess is payable to the plaintiff only involves applying well defined law to the facts.

On the substantive point: I agree fully with the written submission of counsel for the plaintiff. The relevant paragraphs reads as follows:

4.1 The crux of the defendant's submission is that the plaintiff is not entitled to levy cess on the defendant for the production of CPKO.

See: P 9.1 of the defendant's outline of submission.

4.2 As stated earlier, this issue has been the subject of an earlier judicial determination, which has since been reported under the name of *Premium Vegetable Oils Sdn Bhd v Palm Oil Research & Development Board Malaysia & Anor* [1997] 3 AMR 2097. We most respectfully adopt and repeat the grounds therein.

4.3 What is meant by the words 'and/or' in the Palm Oil (Research Cess) Order 1979 ('the Order')?

4.3.1 Palm oil as defined in Palm Oil (Research Cess) Act 1979 ('the Act') at s 2 however has to be read in this context.

4.3.2 The Order says that it was made by the minister pursuant to s 14 of the Act.

4.3.3 Has the Order extended the ambit of the Act? It is respectfully submitted that it has not for the following reasons.

4.3.4 The definition of palm oil in the definition section is neither exclusive nor exhaustive. It has to be read in the context with the Act as a whole.

4.3.5 The intention of the legislative in creating a cess is to support, inter alia, research work, increasing public awareness of palm oil and oil palm (see ss 10(2) and 10(3)(c) of the Act) in the interest of the public and the nation as a whole.

4.3.6 To read that Order in a restrictive manner would do violence to the intent and purpose of the legislature. It would result in an illogical if not undesirable conclusion in the board being allowed to promote oil from palm only but not from its kernel or seed (which also comes from the palm).

4.3.7 It is an essential cannon of statutory interpretation that the court should not do violence or nullify the effect or working of a statute.

See: *Citibank Bhd v Ahmad Khalid Bin Farzolur Rahman & 2 Ors* [2000] 3 AMR 3475 at p 3486.

4.3.8 To construe a statue to ensure that the provisions merge harmoniously together, it is permissible to read 'and' as 'or'.

See: (a) *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45 at p 49.

(b) See generally 44(1) *Halsbury's Laws of England* (4th Ed) (London, 1995) at paras 1389, 1414 and 1428.

4.4 Further, the defendant's contention is that the Order is ultra vires:

4.4.1 there is a presumption of validity in any delegated legislation;

4.4.2 the onus is on the defendant to show that the Order was ultra vires and invalid;

4.4.3 the defendant has failed to adduce evidence as to Parliament's intention by not adducing evidence from Hansard;

4.4.4 It is permissible under the rule enunciated in *Pepper v Hart* (adopted by the then Supreme Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 2 MLJ 345;

4.5.5 Section 17A of the Interpretation Act 1948/67.

4.5 The words have been given a literal interpretation by the learned judge in the 1997 suit.

See: (a) *Citibank Bhd v Ahmad Khalid Bin Farzolur Rohana & Ors* [2000] 3 AMR 3475.

4.6 Even if there is an ambiguity (which is denied), which there is not in the 1979 Act. the ambiguity ought to be resolved by also resorting to the common law approach enunciated in *Pepper v Hart* which has now been codified by the legislature in enacting s 17A of the Interpretation Acts 1948 and 1967.F

4.6.1 Therefore, this line of defence in itself ought not to have been entertained at all by this honourable court since it is tantamount to allowing a collateral attach to be made on a court of competent jurisdiction ie it is an abuse of the court's process.

4.7 It is respectfully submitted that the defendant's appeal against the decision of the learned senior assistant registrar has no merit and ought therefore to be dismissed.'

I agree and will also adopt the judgment of KL Rekhraj JC (as he then was) on exactly the same issue concerning the same plaintiff in *Premium Vegetable Oils Sdn Bhd v Palm Oil Research and Development Board, Malaysia & Anor* [1997] 3 AMR 2097 wherein he held that:

> Reading ss 2 and 14(1) of the 1979 Act it is clear that the 1979 Act has expressly reserved to the relevant minister the powers to impose, vary or cancel a cess. In exercising those powers, the minister is the degated arm of the Parliament. Therefore, his acts under the Palm Oil (Research Cess) Order 1979, Palm Oil (Research Cess) Amendment Order 1982 and Palm Oil (Research Cess) Amendment Order 1984 enjoy the force of law and are not ultra vires. These Orders must be read together with the principal Act as though the amendment orders were enacted in the 1979 Act itself.
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> The prefix 'of' in 'for every metric ton of crude palm oil' covers a broad aspect of the class of palm oil including CPKO and is not restrictive to a unit.
>
> It is also clear that when the 1979 Act was passed, Parliament intended that all oil palm millers were required to pay cess on any kind of crude oil, whether produced from the fruits and/or seeds.
>
> The words 'and' and 'and/or' in s 2 of the 1979 Act are loosely and interchangeably used to convey a disjunctive meaning, implying a variety or

element of an alternative product, attracting cess to be payable by the plaintiff on CPKO as being a class of crude palm oil.

Appeal dismissed with costs.

Appeal dismissed.

Reported by Benjamin Yong